

§§ 1941.72–1941.74

7 CFR Ch. XVIII (1–1–04 Edition)

§§ 1941.72–1941.74 [Reserved]

§ 1941.75 Retention and use of security agreements.

Original executed security agreements will not be altered or destroyed, and will remain in the case file when new security agreements are taken. Changes in security property will be noted *only* on the work copy. When an additional security agreement covering all collateral for the debt is taken, the work copy of the previous security agreement may be destroyed.

§§ 1941.76–1941.78 [Reserved]

§ 1941.79 Future advance and after-acquired property clauses.

The future advance and after-acquired property clauses of security agreements will be considered valid in all respects in UCC States unless otherwise provided in a State supplement.

(a) *Future advance clause.* A properly prepared, executed, and filed or recorded FmHA or its successor agency under Public Law 103–354 financing statement and a properly prepared and executed FmHA or its successor agency under Public Law 103–354 security agreement give FmHA or its successor agency under Public Law 103–354 a security interest in the property described. This security interest covers future loans, advances, and expenditures, as well as any other FmHA or its successor agency under Public Law 103–354 debts evidenced by notes and any advances or expenditures for debts evidenced by such notes. However, when a borrower's indebtedness is paid in full, a new security agreement must be taken in all cases to secure an initial loan made following the payment in full.

(b) *After-acquired property clause.* After a security interest is acquired in certain property, any property (except fixtures) acquired which is of the same type as that described in the financing statement and security agreement will also serve as security for the debt. The after-acquired property clause in the security agreement will encumber crops grown on the land described in the security agreement and financing statement, provided the crops are planted or otherwise become growing

crops within 1 year of the execution date of the security agreement, or within such other period as provided in a State supplement. FmHA or its successor agency under Public Law 103–354 after-acquired security interests take priority over other security interests perfected after the FmHA or its successor agency under Public Law 103–354 financing statement is filed, except as stated in §1941.60.

(c) *State supplements.* A State supplement concerning future advance and after-acquired property clauses will set forth requirements for filing or recording security instruments in that State. This will assist County Supervisors in other States who request such information in accordance with §1941.57(g). A State supplement will also be issued when OGC determines that it is needed to reflect any amendments made to a State's UCC.

§§ 1941.80–1941.83 [Reserved]

§ 1941.84 Title clearance and closing requirements.

(a) For loans over \$10,000, title clearance is required when real estate is taken as primary security.

(b) For loans of \$10,000 or less, and loans for which real estate is taken as primary security, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the estate security, a title search will be required.

(c) Title clearance is not required when real estate is taken as additional security, as defined in §1941.4 of this subpart.

(d) When real estate is taken as primary security, as defined in §1941.4 of this subpart, title clearance and loan closing requirements will be carried out in accordance with subpart B of part 1927 of this chapter.

(e) If any prior liens against the real estate offered as security contain provisions (such as future advance clauses

not limited to a specific amount) that could jeopardize either the security position of the Government or the applicant's ability to meet the obligations of the prior liens and FmHA or its successor agency under Public Law 103-354 loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions.

(f) If a lien is to be taken on real estate which is already subject to a lien, and if State law allows a prior lienholder to foreclose on a loan (under power of sale or otherwise) without notifying a junior lienholder of the foreclosure proceedings, the prior lienholders must agree, in writing, to give FmHA or its successor agency under Public Law 103-354 advance notice of all foreclosure proceedings and of any assignment of the mortgage.

(g) Each real estate lien will be taken on Form FmHA or its successor agency under Public Law 103-354 1927-1 (State), "Real Estate Mortgage or Deed of Trust for _____," unless a state supplement requires the use of another form.

(h) If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the purchase contract holder must agree, in writing, that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate. If necessary, the applicant will negotiate with the purchase contract holder to arrive at a new contract without any provisions objectionable to either FmHA or its successor agency under Public Law 103-354 or the lender.

(3) If a satisfactory contract of sale cannot be negotiated or if the purchase contract holder refuses to agree to apply the insurance proceeds toward the repair or replacement of the real estate and wants to retain some of the proceeds as an extra payment on the balance owed, the applicant will make every effort to refinance the existing purchase contract.

(4) The purchase contract must not be subject to summary cancellation on

default and must not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(5) The contract holder must agree, in writing, to give the Government notice of any breach by the purchaser, and must also agree to give the Government the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on the day the Government receives the written notice of the breach.

[51 FR 13448, Apr. 21, 1986, as amended at 56 FR 67480, Dec. 31, 1991; 58 FR 26680, May 5, 1993]

§§ 1941.85–1941.87 [Reserved]

§ 1941.88 Insurance.

(a) *Catastrophic Risk Protection (CAT) insurance requirement.* Applicants must obtain at least the CAT level of crop insurance of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, if such coverage is offered. The applicant can meet this requirement by either:

(1) Obtaining at least the CAT level of coverage or,

(2) Waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loss loan assistance is not considered emergency crop loss assistance for purposes of this waiver.

(b) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA or its successor agency under Public Law 103-354 requires and "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA or its successor agency under Public Law 103-354 is not the